

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2011-485-817

IN THE MATTER OF the Marine and Coastal Area
 (Takutai Moana) Act 2011

IN THE MATTER OF an application for an order
 recognising Customary Marine Title
 and Protected Customary Rights

BY the late Claude Augustin Edwards
 (deceased), Adriana Edwards and
 others on behalf of Te Whakatōhea

Counsel: T Sinclair and B Cunningham for Te Whakatōhea; Hiwarau C,
 Turangapikitoi, Waiotahe, and Ohiwa of Whakatōhea;
 Pakowhai Hapū; and Whānau a Apanui
 C Linstead-Panoho and T K Williams for Ngāi Tamahaua and
 Te Hapū Titoko o Ngāi Tamahaua
 N Coates for Te Whānau a Apanui
 E Rongo for Ngāti Torere and Ririwhenua Hapū
 C Leauga and D Stone for Whānau a Te Harawaka
 B Lyall for Te Ūpokorehe Trust
 M Sinclair, M Sharp and J Waaka for Ngāti Muriwai Hapū
 C Hirschfeld for Ngāti Huarere ki Whangapoua
 (watching brief only)
 A Warren and K Ketu for Whānau a Mokomoko
 H Irwin-Easthope for Te Rūnanga o Ngāti Awa
 A Sykes and J Chaney for Ngāti Ira o Waioweka Rohe
 K Feint QC for Ngāti Ruatakenga
 T Bennion for Ngāti Patumoana
 J Pou for Whakatōhea Māori Trust Board
 T Castle for Ngāi Taiwhakaea (watching brief only)

Interested Parties:

R Roff, R Budd and S Gwyn for Attorney-General
A Williams for Seafood Industries Representatives
M Jones for Whakatane District Council
C Finlayson QC, A Dartnall and S Eldridge for Landowners
Coalition Ltd

Minute: 24 August 2020

MINUTE (NO. 26) OF CHURCHMAN J
[Evidence admissibility]

[1] This is a minute addressing the evidential issues raised in the memorandum of counsel dated 19 August 2020.

[2] The first issue relates to the evidence of witnesses that has been filed in this Court in these proceedings and the witnesses have subsequently passed away.

[3] Under s 105 of the Act, the Court has the ability to accept evidence that would not normally be admissible in the High Court pursuant to the High Court Rules.

[4] As I have earlier indicated to counsel in respect of such evidence, the Court regards it as admissible. Should it be challenged, in whole or in part, then the Court will have to assess what weight can be given to it, and one of the factors that will be of some moment will be whether or not that evidence has been challenged, and the nature of that challenge. So, the starting point for counsel should be that such evidence is admissible.

[5] In relation to the second issue, all evidence that was filed in the Māori Land Court (MLC) in this matter has automatically been transferred as part of the record that was transferred from the MLC to this Court and becomes part of the evidential base in these proceedings.

[6] A subpart of the query of counsel in relation to such evidence was whether or not it should be disregarded if the witness in question did not also appear for the hearing in this Court. The answer to that, again, depends on the nature of the evidence. If the evidence is contested, then any weight that can be given to it will be subject to consideration of the basis of the challenge. So, again, such evidence, on the face of things, is admissible but if there is a significant challenge to it, the Court may not be able to accord much by way of weight to it.

Churchman J